

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

STATE OF GEORGIA,

DEFENDANT.

Civil Action No.
1:16-cv-03088-ELR

**JOINT MOTION FOR ENLARGEMENT OF TIME
AND ENTRY OF AMENDED SCHEDULING ORDER**

NOW COME the United States of America and the State of Georgia, by and through below counsel of record, and move this Court pursuant to Federal Rule of Civil Procedure 6(b) for an enlargement of time extending the fact discovery deadline to and including January 31, 2023 and for entry of a joint proposed amended scheduling order. The grounds for this motion are more particularly set forth in the accompanying memorandum of law.

Dated: September 2, 2022.

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF
JOINT MOTION FOR ENLARGEMENT OF TIME
AND ENTRY OF AMENDED SCHEDULING ORDER**

Pursuant to Federal Rule of Civil Procedure 6(b), Plaintiff the United States of America (“United States”) and Defendant the State of Georgia (“State”) jointly request an extension of the discovery deadline set forth in this Court’s September 14, 2021 Order (*see* ECF 117) and entry of the attached proposed amended scheduling order.

Rule 6(b) permits the Court broad discretion in granting enlargements of time made prior to the expiration of the time originally permitted to make the subject filing. *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1366 (11th Cir. 1997) (“We recognize that district courts enjoy broad discretion in deciding how best to manage the cases before them.”); *Cable/Home Commc'n Corp. v. Network*

Prods., Inc., 902 F.2d 829, 859 (11th Cir. 1990) (discussing discretion afforded to district courts when ruling on requests for enlargements of time); *see also* Wright & Miller, *Federal Practice and Procedure* § 1165 (1987).

The parties have made significant progress with fact discovery since the discovery period opened in July 2020. During the first fourteen months of discovery: the United States served its First Set of Interrogatories and First Request for Production of Documents (*see* ECF 74, 75); the State served its written responses to those initial discovery requests (*see* ECF 84, 85) and its First Requests for Production of Documents (*see* ECF 89); the United States served its written responses to the State's first request for production (*see* ECF 90); the State served its First Interrogatories and Second Requests for Production of Documents (*see* ECF 99); the United States responded to those interrogatories and the second request for production (*see* ECF 101, 102); and the United States served 18 third-party document subpoenas on various GNETS programs and/or their fiscal agents (*see* ECF 108-113).

During the same time period, the parties worked with one another to reach agreement on a number of issues related to the vast amount of electronically stored information ("ESI") at issue in this matter, including the identification of relevant document custodians, application of search terms, and other e-discovery

considerations related to the parties' production of documents. The parties produced documents to one another on a rolling basis and worked cooperatively to address any issues that arose in the course of that production.

In the twelve months since the Court's entry of its September 14, 2021 Order extending discovery, the parties have continued to make significant progress. The United States received nearly 10,000 documents in response to the 18 third-party document subpoenas that it served on regional GNETS programs and/or their fiscal agents. After receiving and conducting an initial review of those documents, the United States attempted to negotiate voluntary site inspections of various GNETS facilities. Ultimately, to obtain access to such facilities the United States was required to issue 77 third-party subpoenas for inspection of premises (*see, e.g.*, ECF 122-125, 136-147, 149). The United States negotiated the terms of those subpoenas with multiple parties, submitted discovery statements for those parties with whom it was unable to negotiate a resolution, and eventually filed two successful motions to compel compliance with several inspection subpoenas (*see* ECF 162-163, 175, 174, 179, 183, 193). Since September 2021, the United States and its experts have conducted five and a half weeks of site inspections covering 18 regional GNETS programs and nearly 60 facilities. The United States has also taken 21 depositions involving

numerous state personnel and directors of regional GNETS programs (*see* ECF 135, 165-167, 206-208, 210-212, 214-223). Finally, the parties have continued to exchange written discovery. In the spring of 2022, the United States issued its second request for production of documents to the State, and the State provided its response (*see* ECF 177, 194). In the summer of 2022, the United States issued its second set of interrogatories and third request for production of documents to the State (*see* ECF 228-229), six additional document subpoenas to regional GNETS programs (*see, e.g.*, ECF 252, 256-259), and a document subpoena to each of Georgia's 24 Community Service Boards (*see* ECF 231-251, 253-55). To date, the United States has produced 1,831 documents totaling more than 11,000 pages from more than 30 Department of Justice personnel involved in this litigation, and the State has produced more than 677,000 documents totaling more than five million pages from 49 custodians affiliated with the Georgia Board of Education, the Georgia Department of Education, the Georgia Department of Behavioral Health and Developmental Disabilities, or the Georgia Department of Community Health.

Despite the parties' progress, there is still a significant amount of fact discovery to complete before the parties can proceed with expert discovery. The pleadings thus far filed, the information provided in the Amended Joint

Preliminary Report and Discovery Plan (*see* ECF 68), and the substance of the parties' April 2021, August 2021, December 2021, March 2022, and June 2022 Joint Status Reports (*see* ECF 97, 105, 126, 164, 209) outline the elements of this matter that cause the parties to respectfully move for an enlargement of time. The United States specifically alleges violations of Title II of the Americans with Disabilities Act by the State, affecting delivery of educational services to students with disabilities statewide. The State maintains that it cannot provide the relief the United States seeks because Georgia's local school districts, through their IEP teams, determine whether a student requires GNETS program services and because the school districts – not the State – operate the GNETS programs (of which no individual employed by the State is part).

In light of the parties' positions, this case involves a voluminous amount of ESI that is maintained in various databases and information systems by numerous custodians spanning several State agencies. Moreover, the United States has advised the State that it intends to conduct an additional 30-35 depositions and that it intends to conduct additional site visits prior to the close of fact discovery. For these reasons, the parties need additional time to gather, produce, and review written discovery; complete in-person site visits to school facilities throughout Georgia serving students with emotional and behavior-

related disabilities in GNETS classrooms and general education classrooms; and conduct remaining depositions. The parties anticipate that this outstanding discovery can be completed by January 31, 2023.

The parties are mindful of the Court's concern about minimizing any unnecessary delays in this case. Accordingly, if the Court grants this Joint Motion for Enlargement of Time, the parties propose filing an additional status report with the Court on December 1, 2022. This status report will provide the Court with detailed information regarding the parties' progress in discovery and any outstanding issues that may impact that progress.

Based upon the above, the United States of America and the State of Georgia respectfully request an enlargement of time, through and including January 31, 2023, to complete fact discovery in this case. For the Court's convenience, a proposed Order granting the enlargement of time and setting forth an amended schedule is attached.

Respectfully submitted,

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Certificate of Compliance

I hereby certify, pursuant to Local Rules 5.1 and 7.1D, that the foregoing motion and brief have been prepared using Book Antiqua, 13-point font.

/s/ Aileen Bell Hughes

AILEEN BELL HUGHES

Assistant United States Attorney

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Certificate of Service

I served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record.

September 2, 2022.

/s/ Aileen Bell Hughes

AILEEN BELL HUGHES

Assistant United States Attorney

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AMENDED SCHEDULING ORDER

Having read and considered the United States of America and the State of Georgia's Joint Motion for Enlargement of Time and Entry of Amended Scheduling Order and for good cause shown, it is hereby ORDERED that the United States of America and the State of Georgia shall be granted an extension of time to complete fact discovery through and including January 31, 2023. The Court further ORDERS the parties to file an interim Joint Status Report on December 1, 2022, and to comply with the following scheduling deadlines:

Expert Discovery: The parties shall disclose the names and curriculum vitae of their experts by February 15, 2023 and shall exchange expert reports by March 31, 2023. The parties shall disclose rebuttal experts and exchange rebuttal expert reports by May 1, 2023. The parties may depose each side's respective

experts in depositions that do not exceed seven hours of testimony for each expert. Expert discovery shall be completed no later than June 14, 2023.

Post-Discovery Conference: The parties shall hold an in-person post-discovery settlement conference in accordance with Local Rule 16.3 no later than June 28, 2023.

Summary Judgment: The parties shall file any motions for summary judgment no later than July 14, 2023.

So ordered this _____ day of September, 2022.

ELEANOR L. ROSS
UNITED STATES DISTRICT JUDGE

Presented By:

/s/ Aileen Bell Hughes

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